IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 51 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Applicant(s)
Versus
MOHAMAD SOEB MOHMAD HANIF MALEK & 2 - Respondent(s)

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Appearance :
PUBLIC PROSECUTOR for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
NOTICE SERVED for Respondent(s) : 2,
MR JB PARDIWALA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 21/08/2007

ORAL JUDGMENT

1. The petitioner State has filed this application under section 397 read with section 401 of Criminal Procedure Code and challenged the order

passed below Exh 2 in Sessions Case No. 72/06 on 29.11.06 by Addl. Sessions Judge and Presiding Officer, First Fast Track Court, Surat whereby the Court allowed the application filed by respondent accused and directed the Nazir of the Court to break open the seal applied on the muddamal C.D in presence of two panchas and after making four copies thereof to seal again the muddamal C.D and to produce the four copies in sealed cover in the court.

2. The respondents are prosecuted for the offences punishable under section 376, 292 (1) (2) (a)(b) 509, 506, (1) and 114 of I.P Code.

3. A complaint was lodged before Kosamba police station on 17.12.05 alleging that before about one month respondents accused Mohammed Sohil and Hemant Kumar met the victim while she was going for tuition and took her towards Ankleshwar on the pretext of droping her at the tuition and respondent accused Hemant committed rape in a hotel room and also gave threat to defame her; thereafter about 15 days respondent accused Hemant came to her flat and informed her that he had taken pictures of the sexual acts in his mobile phone camera and had prepared C.D (compact disc) thereof and would circulate the same if she did not keep sexual relations with him and again committed rape in her flat; as respondent accused Hemant had given threats to circulate C.D she did not inform her

mother or anyone and did not lodge complaint but as there were news about a boy and girl of Kosamba in newspaper she suspected that respondent accused Hemant was out to defame her and therefore complaint was filed. On the basis of complaint offence was registered and investigation was started. During the course of investigation two mobile phones and C.D with other articles were recovered. On completion of the investigation charge sheet was filed and the case was committed to the Sessions Court for trial. The learned trial judge framed charge against the accused for the aforesaid offences.

4. The respondent accused Hemant Dineshbhai filed application Exh 2 to provide him certain documents and C.D as they were necessary for defence.

5. After hearing, learned trial judge allowed the application and passed the impugned order. Being aggrieved by the said order State has preferred this Revision Application .

6. I have heard learned APP Ms Raval and learned advocate Mr. Pardiwala for respondent accused.

7. Ms Raval has submitted that C.D is a muddamal article and prosecution is not required to supply the same to accused. She has also submitted

that if C.D is supplied to the respondent she apprehends that it would be misused by circulating and identity of victim of sexual offence would be disclosed and it would be against the directions issued by Hon'ble Supreme Court and therefore order is erroneous. She also submitted that C.D may be played in court or chamber of judge and it would protect the interest of prosecutrix. She also submitted that even otherwise order is required to be set aside. She has relied upon the decision of **Dinesh Vs State of Rajasthan reported i 2006 Cr.L.J 1679**.

8. Learned advocate Mr Pardiwala for the petitioner has submitted that prosecution is bound to provide all the documents relied upon by it and muddamal C.D being a document is also required to be provided to the accused. He has relied upon the decision of **Laxmansingh Darsinhji Gohel and anr. Vs State of Gujarat reported in 1992 (2) GLR 1197** Mr Pardiwala also stated that copy of the C.D if given to the accused, it will be kept in the custody of advocate and he would not part with it and will not be given to the accused or anyone and would be returned to the court as soon as trial is over.

9. Learned advocate Mr. Pardiwala has confined his arguments with regard to supply of C.D only and has stated that he expects that copy of other documents relied upon by the prosecution would be supplied to the accused, before, recording of

evidence starts before the trial court and therefore does not make any submission with regard to the supply of the copy of those documents.

10. In the decision of **Laxmansinh Dansinhji Gohel & anr Vs State of Gujarat reported in 1992 (2) GLR page 1197** while dealing with the question whether clause (a) of subsection 5 of section 173 also covers muddamal articles, if they consist of documents, the Court held that if the prosecution tries to prove muddamal articles which happens to be a document, to use and rely on as documentary evidence, then in that case accused will be entitled to copy of those articles which happens to be a document. In the instant case prosecution relies upon C.D which contains the pictures taken from camera of mobile phone. It cannot be denied that any matter expressed or described upon any substance by means of letters, figures or marks intended to be used for the purpose of recording that matter is a document and therefore C.D is required to be provided to the accused under section 207 of Criminal Procedure Code as C.D is forwarded to magistrate under section 173 (5) of Criminal Procedure Code. Therefore prosecution has no right to withheld the same on the ground that it is muddamal and therefore not required to be supplied to respondent accused. In my view respondent accused are entitled for C.D relied upon by prosecution.

11. As regards apprehension of disclosure of

identity of rape victim, it is true that Hon'ble Supreme Court has time and again issued directions that identity of victim of sexual offence should not be disclosed. In the present case, in view of the fact that prosecution has relied upon C.D it being a documentary evidence, valuable right of accused cannot be denied on the ground that it might be put into circulation which would disclose identity of the victim. The respondent accused is being prosecuted for the offence punishable under section 292 (1) (2) (a) (b) of IPC along with other offences. Therefore according to prosecution, C.D has already been put into circulation by the respondent accused. Therefore apprehension has already been turned into reality and therefore this argument does not survive now. The decision of Dinesh (supra) relied upon by Ms Raval is in respect of reference of name of rape victim in the judgment but in facts of this case at this stage decision cannot be made applicable. The suggestion that C.D may be viewed in the presence of the accused in the Court room or chamber and thereby right of the accused and interest of victim may be protected, in my view when accused has a right under law to have documents relied upon by prosecution it cannot be denied be cause C.D can be viewed in the court room. As observed earlier learned advocate has stated that C.D would not be a part with and therefore there is no reason to refuse valuable right available to the accused on the ground that it will be misused by circulation.

12. In view of above, C.D being the pictures taken from muddamal mobile phone camera is a document and as it is relied upon by prosecution the respondent accused are entitled for the same. The prosecution has no right to withheld the same on the ground that C.D might be put into circulation as respondents are prosecuted for the offence punishable under section 292 (1) (2) (a) (b) of IPC. The petitioner has failed to point out that the impugned order is erroneous and perverse. In my view learned trial judge has not committed error in exercising jurisdiction vested in him. Therefore revision application is required to be dismissed.

13. In the result, this revision application fails and stands dismissed. Rule stands discharged. Interim relief stands vacated. The trial court shall take into account the assurance given by learned advocate Mr. Pardiwala with regard to custody of C.D.

14. Learned APP requests to extend interim relief granted earlier to enable the State to approach higher forum. In view of this interim relief granted is extended for three weeks.

(Bankim Mehta,J)

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